



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0722; FRL-9990-85-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Commercial Fuel Oil Sulfur Limits for Combustion Units in Philadelphia County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision updates Philadelphia County's portion of the Pennsylvania SIP, which includes regulations concerning sulfur content in fuel oil. This revision will implement lower sulfur fuel oil provisions in the Philadelphia County that will reduce the amount of sulfur in commercial fuel oils used in combustion units which will aid in reducing sulfates that cause decreased visibility. This revision will strengthen the Pennsylvania SIP. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0722 at <http://www.regulations.gov>, or via email to Spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Erin Trouba, (215) 814-2023, or by e-mail at trouba.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 21, 2018, the City of Philadelphia, Air Management Services (AMS) through the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal revision to the Pennsylvania SIP. The SIP revision consists of an amendment to 40 CFR 52.2020(c)(3), the Philadelphia County portion of the SIP¹, in order to implement provisions for lower sulfur levels in commercial fuel oil in Philadelphia County.

Sulfur dioxide (SO₂) emissions contribute to the formation of fine particulate matter (PM_{2.5}) and sulfates in the atmosphere, and subsequently to the formation of regional haze. Regional haze is

¹ The Pennsylvania SIP is set forth at 40 CFR 52.2020(c), with the Philadelphia portion of the Pennsylvania SIP located at 40 CFR 52.2020(c)(3).

visibility impairing pollution that scatters and absorbs light. The pollutants that cause visibility impairment come from sources and activities that emit fine particles and their precursors, SO₂, PM_{2.5}, nitrogen oxides (NO_x), and volatile organic compounds (VOCs).

The June 21, 2018 SIP revision consists of amendments to the Philadelphia County portion of the Pennsylvania SIP regarding provisions for lower sulfur levels in fuel oil in Philadelphia that are more stringent than the state-wide SIP-approved provisions.² Since 1972, the Pennsylvania SIP has contained provisions limiting the amount of sulfur allowable in fuel oils in Philadelphia County. In recent years, amendments were made to Title 3 of the Philadelphia Code, the Air Management Code (AMC) and to Air Management Regulation (AMR) III, to lower the maximum allowable level of sulfur in number 2 and lighter fuel oils, to impose more stringent levels on number 4 commercial fuel oils, and to add exemption provisions relating to commercial fuel oil.³

The Commonwealth of Pennsylvania (Commonwealth or Pennsylvania) has now submitted the finalized amendments to Title 3 of the AMC and to AMR III for inclusion into the Pennsylvania SIP.

II. Summary of SIP Revision and EPA Analysis

Through its June 2018 SIP revision submittal, Pennsylvania seeks to revise its SIP by including

² The regulations in 25 Pa Code Section 123.22 established statewide maximum allowable sulfur contents for certain fuel oil types beginning July 1, 2016. 79 FR 39330 (July 10, 2014).

³ On June 5, 2014, amendments were proposed to Section 3-207 of the AMC (relating to commercial fuel oil) to lower the maximum allowable level of sulfur in number 2 and lighter commercial fuel oils and impose more stringent levels on number 4 fuel oils. The amendments were signed into law on July 15, 2014. Further amendments to Section 3-207 of the AMC to add exemption provisions relating to commercial fuel oil in a new subsection (c) were proposed on May 21, 2015 and subsequently signed into law, becoming effective on June 18, 2015. The Air Pollution Control Board (APCB) of Philadelphia's Department of Health subsequently adopted amendments to Air Management Regulation III (AMR III) implementing the changes to the AMC. The regulatory amendments addressing the 2014 changes to the AMC were adopted on March 19, 2015 and became effective on June 15, 2015. Re-proposed amendments to AMR III reflecting both the 2014 and 2015 changes to Section 3-207 of the AMC were adopted by the APCB on October 14, 2015 and became effective on November 25, 2015.

amendments to Section 3-207 of the AMC, as well as Sections I, II, and III of AMR III (Control of Emissions of Oxides and Sulfur Compounds). AMR III, Section I(A)(1)(a) lowers the maximum allowable sulfur content in number 2 and lighter fuel oils from 0.2 percent (%) by weight (2000 parts per million (ppm)) to 0.0015% by weight (15 ppm) and lowers the maximum allowable sulfur content in number 4 fuel oils from 0.3% by weight (3000 ppm) to 0.25% by weight (2500 ppm). In this proposed SIP revision, the maximum allowable sulfur content for number 4 and heavier fuel oils is equal to, and the level for number 2 and lighter fuel oils is more stringent than, the state-wide levels set by Pennsylvania.

AMR III, Section I(A)(1)(b) lowers the permissible SO₂ emissions from the combustion of number 4 fuel oils from 0.30 pounds of SO₂ per Million BTU (lbs SO₂/MMBtu) Fuel Gross Heat Input to 0.26 lbs SO₂/MMBtu Fuel Gross Heat Input. AMR III Section I also adds paragraphs (c) through (f) allowing commercial fuel oil stored by the ultimate consumer at its facility prior to the applicable compliance date, July 1, 2015, to be used after that applicable compliance date, if the fuel oil met the applicable maximum allowable sulfur content at the time it was stored, provided that certain conditions are met. One of those conditions are that there are written records of the sulfur content of the fuel oils and that all of the noncompliant fuel oil stored before July 1, 2015 is used before July 1, 2020. The City of Philadelphia Department of Public Health (the Department) reserves the authority to extend the July 1, 2020 deadline in the case of a variety of circumstances included in the regulation. Section II(A) of AMR III lowers the sulfur oxides emission limit to 0.4 ppm for any 5-minute period when measured at a ground level. Section III of AMR III adds provisions regarding exemptions for using noncompliant fuel oil beyond July 1, 2020.

The amendments to Section 3-207 of the AMC also adds an emergency conditions provision. If delivery of compliant low sulfur fuel oil is interrupted because of emergency conditions, the Department may authorize the use of an alternative fuel supply, containing the least amount of sulfur available, for a period not to exceed 30 days. Longer periods of time may be authorized by the Department only after review and recommendation are made by the Air Pollution Control Board.

The state-wide Pennsylvania regulations in 25 Pa Code Section 123.22 established maximum allowable sulfur contents for certain fuel oil types including provisions on sampling and recordkeeping requirements in paragraphs (f) and (g) that apply statewide. The September 26, 2018 letter from the City of Philadelphia included in the docket for this SIP revision assures that those sampling and recordkeeping provisions apply to Philadelphia and that they are enforceable by the City of Philadelphia and that AMS has been delegated authority to enforce the Pennsylvania Air Pollution Control Act, and the Pennsylvania air pollution regulations thereunder, in Philadelphia. 35 P.S. Section 4012.

The Commonwealth asserts that lowering the maximum allowable sulfur content in commercial fuel oils combusted or sold in Philadelphia County will aid in reducing SO₂ emissions that are a cause of regional haze. EPA proposes to approve these regulations to strengthen Pennsylvania's SIP.

III. Proposed Action

EPA has determined that Pennsylvania's proposed SIP revisions to 40 CFR 52.2020(c)(3), which incorporate amendments made to Section 3-207 of the AMC and Sections I, II, and III of AMR III, meet the SIP revision requirements of the CAA. EPA is proposing to approve the June 21,

2018 Pennsylvania SIP revision which amends commercial fuel oil sulfur limits for combustion and sale in Philadelphia County. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Philadelphia County's maximum allowable sulfur content in commercial fuel oil regulation. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule regarding commercial fuel oil sulfur limits for combustion and sale in Philadelphia County does not have tribal implications as specified in Executive Order 13175, because the SIP is not approved to apply in Indian Country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 5, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

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